

TENTATIVE RULINGS for CIVIL LAW and MOTION

September 14, 2012

Pursuant to Yolo County Local Rules, the following tentative rulings will become the order of the court unless, by 4:00 p.m. on the court day before the hearing, a party requests a hearing and notifies other counsel of the hearing. To request a hearing, you must contact the clerk of the department where the hearing is to be held. Copies of the tentative rulings will be posted at the entrance to the courtroom and on the Yolo Courts Website, at www.yolo.courts.ca.gov. If you are scheduled to appear and there is no tentative ruling in your case, you should appear as scheduled.

Telephone number for the clerk in Department Fifteen: (530) 406-6722

TENTATIVE RULING

Case: California Clean Energy Committee v. City of Woodland
Case No. CV PT 11-2146
Hearing Date: September 14, 2012 Department Fifteen 8:30 a.m.

This matter is **CONTINUED** on the Court's own motion to September 21, 2012, at 8:30 a.m. in Department 15.

TENTATIVE RULING

Case: California Public Records Research, Inc. v. County of Yolo
Case No. CV PT 11-2537
Hearing Date: September 14, 2012 Department Fifteen 8:30 a.m.

Respondents County of Yolo and Freddie Oakley's demurrers to the first cause of action for violation of mandatory duty and second cause of action for abuse of discretion pursuant to Code of Civil Procedure section 1085 are **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Petitioner fails to plead specific facts, other than mere conclusions, establishing that the rates established by respondent County of Yolo exceed both the direct and indirect costs of providing the product or service. (See e.g., *North County Parents Organization v. State Board of Education* (1994 23 Cal.App.4th 144 [distinguishing between "direct" and "indirect" costs].) The Court disagrees with respondents that Government Code section 27361 governs the Yolo County Recorder's imposition of copying fees for recorded documents. By its plain language, it applies to "fee[s] for recording and indexing," not copying. (Gov. Code, § 27361, subd. (a).) However, Government Code section 27366 provides that copying fees for recorded documents "shall be set by the board of supervisors in an amount necessary to recover the direct and indirect costs of providing the product or service or the cost of enforcing any regulation for which the fee or charge is levied." (Gov. Code, § 27366.)

The demurrer to the third cause of action for violation of mandatory duty pursuant to Code of Civil Procedure section 1085 based on the imposition of a special tax is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Petitioner does not plead facts to

demonstrate that the subject fee is not exempted under the California Constitution, Article 13C, section 1(e)(2).

The demurrer to the fourth cause of action for declaratory relief is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Petitioner has adequately pled that an actual controversy exists as to whether the amount charged for copying fees is a correct reflection of direct and indirect costs. (Verified Petition for Writ of Mandate, ¶ 78.)

The demurrer to the fifth cause of action for negligence is **SUSTAINED WITH LEAVE TO AMEND**. (Code Civ. Proc., § 430.10, subd. (e).) Petitioner does not oppose the demurrer to this cause of action and does not plead facts supporting each element of this cause of action against respondents.

The demurrer to the sixth cause of action for a class action for money had and received is **OVERRULED**. (Code Civ. Proc., § 430.10, subd. (e).) Respondents cite no legal authority to support their demurrer to this cause of action on the ground that the damages sought are “random and unsubstantiated.”

The notice of motion does not provide the correct address for Department 15. Department 15 is located at 1100 Main Street, in Suite 300, in Woodland.

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.

TENTATIVE RULING

Case: **Main v. Valley Slurry**

Case No. CV CV 11-968

Hearing Date: **September 14, 2012** **Department Fifteen** **8:30 a.m.**

Defendants’ ex parte application for an order vacating, or in the alternative, continuing the trial date is **DENIED**. (Cal. Rules of Court, rule 3.1332.) Defendants fail to make an affirmative showing of good cause for the continuance of the trial date. (*Ibid.*)

Defendants’ contention that the “late service by [p]laintiff of his [c]omplaint on the individual [d]efendants, and the delay in the hearings on the MSJ/A and [d]emurrer” was “**due to no fault of [d]efendants**” is unsupported. (Defendants’ ex parte application, p. 7; emphasis added.) On August 30, 2012, defendants voluntarily executed and filed a stipulation and order to continue the MSJ/A hearing to September 12, 2012. Further, plaintiff attempted service of its complaint on the individual defendants as early as June 16, 2011. (Declaration of Adam Reisner, ¶ 17.) However, defendants’ counsel refused to accept service for the individual defendants at that time. (*Ibid.*)

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **McClelland v. Chaurasia**
Case No. CV CV 08-1868

Hearing Date: **September 14, 2012** **Department Fifteen** **8:30 a.m.**

The request for judicial notice is **GRANTED**. (Evid. Code, § 452, subds. (c) & (d).)

The unopposed motion to expunge lis pendens filed by defendants Ocwen Loan Servicing, LLC and U.S. Bank National Association, as Indenture Trustee for the Registered Holders of Ageis Asset Backed Securities Trust 2005-2, Mortgage Backed Notes, is **GRANTED**. (Code Civ. Proc., § 405.30; *United Professional Planning, Inc. v. Superior Court* (1970) 9 Cal.App.3d 377, 385.)

The notice of motion does not provide the correct address for Department 15. Department 15 is located at 1100 Main Street, in Suite 300, in Woodland.

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 11.4(b). Counsel for moving party is ordered to notify the opposing party or parties immediately of the tentative ruling system and to be available at the hearing, in person or by telephone, in the event the opposing party or parties appear without following the procedures set forth in Local Rule 11.4(a).

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice is required.

TENTATIVE RULING

Case: **Pemco Ltd. v. Middle Earth Investments, Inc.**
Case No. CV CV 11-1886

Hearing Date: **September 14, 2012** **Department Fifteen** **8:30 a.m.**

Plaintiff shall ensure that future papers filed with the Court contain the correct case number in the caption.

Defendant Middle Earth Investments, Inc.'s request for judicial notice is **GRANTED IN PART**, as to items 1 through 6. (Evid. Code, § 452, subds. (c) & (d); *Friends of Shingle Springs Interchange, Inc. v. County of El Dorado* (2011) 200 Cal.App.4th 1470, 1480.) The request for judicial notice of items 7 and 8 is **DENIED**. Defendant cites no legal authority to support the taking of judicial notice of these items.

Defendant's motion to vacate the void default and default judgment, and quash service of summons is **GRANTED**. (Code Civ. Proc., §§ 416.10, 418.10, subd. (a)(1), 473.5.) Plaintiff fails to demonstrate with any evidence that the individual served with the summons and complaint is the same individual designated with the California Secretary of State as defendant's agent for service of process.

Having granted defendant's motion to vacate the default and default judgment and quash service of summons, defendant's motion for new trial is **DROPPED** from calendar.

The notice of motion does not provide notice of the Court's tentative ruling system as required by Local Rule 11.4(b). Counsel for moving party is ordered to notify the opposing party or parties immediately of the tentative ruling system and to be available at the hearing, in person or by telephone, in the event the opposing party or parties appear without following the procedures set forth in Local Rule 11.4(a).

If no hearing is requested, this tentative ruling is effective immediately. No formal order pursuant to California Rules of Court, rule 3.1312 or further notice, except as provided herein, is required.